that the two appellants knew that if the deceased was left alive after the robbery, he would surely report them to the police and they were bound to be caught.

The appellants also said that it was part of their plan that they were going to tie the deceased up, and in order to do so, they would have to use force to overpower him. That was all that they intended to do with the deceased. This evidence of the appellants was not accepted by the trial judges, for as they observed, the appellants did not bring along with them any material with which to tie up the deceased. Afterwards, when they gained entrance into the flat, no effort was made by them to tie up the deceased. In fact there was no evidence of any struggle in the living area of the flat where the deceased was fatally injured.

There is another aspect to this matter. When the appellants went to the flat, they must have known that the deceased would have either evaded or defended himself from being immobilized. One would have expected that the appellants would have come prepared for this eventuality. Thus it was that Krishnan came armed with the letter opener. He had it carefully tucked in his trousers, probably in his waistband, under his shirt. In the witness box he was pointedly asked by counsel for Ramachandran:

> Q: Now, did you tell the first accused that you had taken the letter opener with you?
> A: I can't remember whether I had told the first accused or not.

Clearly, this was an evasive answer. It is inconceivable to us that whilst Krishnan had discussed the plans for the robbery with Ramachandran he did not tell Ramachandran of the weapon he would take with him. In our view, the trial judges were entitled to infer that 'Ramachandran knew that Krishnan was carrying the letter opener which he knew Krishnan would use to stab the deceased as soon as Ramachandran held him down'.

That was indeed what took place in the flat. On his own evidence, Ramachandran said he grabbed the deceased from the back, and Krishnan stabbed him. Though both of them said that the stab wound was inflicted in the abdomen, we agree with the trial judges, that on the evidence of Dr Wee Keng Poh, the forensic pathologist, the first stab wound was deliberately struck in the neck of the deceased and, as was said by Dr Wee, this was done to 'silence' the deceased. After that, instead of expressing surprise or shock, or restraining Krishnan from further stabbing the deceased or perhaps assisting the deceased in some way, any or all of which would have been a natural reaction had Ramachandran not known that Krishnan was armed with a weapon, Ramachandran released the deceased and ran into the room to ransack it and search for valuables and money. This course of conduct by Ramachandran was consistent with the fact that he knew that Krishnan was armed with the letter opener and that it would be used in the commission of the robbery. On the analysis we have made, it is beyond doubt that there was a common intention on the part of the two appellants to cause hurt to the deceased which in the ordinary course of nature had caused his death.

For these reasons the appeal of the two appellants is dismissed.

Appeal dismissed.

Solicitors: *Sukumar & Teo; Yogen & Partners.*

Reported by *S Surenthiraraj*

Mohd Sainudin bin Ahmad v Consolidated Hotels Ltd & Anor

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 3 OF 1985
LAI KEW CHAI, CHAN SEK KEONG AND RAJAH JJ
30 DECEMBER 1990

Tort — Negligence — Occupier — Whether owners of site were occupiers of or had control over site — Owners engaging contractor and architect to carry out development of site — Duty of care of owners of site to third parties discharged by employment of independent contractors — Liability of independent contractors

Tort — Negligence — Unsafe system of work or current operations — Owners of site engaging independent contractor — Operations of independent contractor not unusually dangerous or hazardous

The plaintiff was injured by a falling brick while working on a construction site. The first defendants were owners of the site. They had engaged a main contractor to erect a building on the site. Possession was given to the contractor to carry out the works. The first defendant also appointed an architectural firm. The second defendant was the sub-contractor of the main contractor and had employed the plaintiff.

The liability of the first defendants was put on two grounds: (1) they were occupiers of or had control of the site in that they had engaged architects and other personnel to supervise the construction and the architect had powers to give instructions to the main contractor; (2) the first defendants were liable for the negligence of the main contractor as the duty of care to the plaintiff was not in the circumstances delegable. The plaintiff's claim was dismissed by the High Court. [See [1989] 1 MLJ 297.]

Held, dismissing the plaintiff's appeal:

(1) The first defendants were not in law and in fact the occupiers of the site or had control of the site. Their supervisors were only there to see that the work was properly done in accordance with the terms of the contract. The occupiers were the main contractors, who had possession of and full control over the site and it was they who had invited the second defendant and his employees to come onto the site.

(2) The architects were independent contractors and not agents of the first defendants, and any control which they might have by virtue of their position could not be said to be the control of the first defendants.

(3) The first defendants were entitled to and did discharge their duty of care to third parties who come onto the site by employing the main contractors and making them liable in respect of personal injury to or the death of any person arising from the carrying out of the works.

(4) The plaintiff was not injured due to any defective and unsafe condition of the premises, but either as a result of current operations being conducted on the site or an unsafe system of work which caused the brick to fall.

(5) The current operations were carried out by the main contractors and the first defendants could not be responsible for any negligence arising from these operations as they were not unusually dangerous or extra hazardous. Accordingly, even if the first defendants were in occupation, they would not be liable on this ground as occupation would not, ipso facto, make them liable for the injury to the plaintiff. If the injury arose as a result of an unsafe system of work, then it would not ordinarily be reasonable to expect an occupier of premises to ensure that a safe system of work is observed by a contractor whom he has engaged and whom he has reasonable grounds for regarding as competent.

Cases referred to

1 *AMF International Ltd* v *Magnet Bowling* [1968] 1 WLR 1028 (folld)
2 *Lembaga Kemajuan Tanah Persekutuan* v *Mariam* [1984] 1 MLJ 283 (distd)
3 *Wheat* v *E Lacon & Co Ltd* [1966] 1 All ER 582 (refd)
4 *Haseldine* v *Daw* [1941] 2 KB 343 (folld)
5 *Honeywill & Stein* v *Larkin Bros* [1934] 1 KB 191 (distd)
6 *Ferguson* v *Welsh* [1987] 1 WLR 1553 (folld)

Appeal from: Suit No 3244 of 1982 (High Court, Singapore)

Subbiah Pillai for the appellant.
Ranvir Kumar Singh for the respondents.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): This was an appeal against the judgment of Thean J who dismissed the plaintiff's claim for damages for negligence against the first defendants. The grounds relied upon by the plaintiff on appeal were the same as those canvassed before and rejected by Thean J in his judgment: see [1989] 1 MLJ 297. At the conclusion of the hearing before us, we dismissed the appeal.

The plaintiff had obtained judgment against the second defendant for damages for negligence in failing to provide a safe and proper system of work and exposing him to this risk of damage and injury. That judgment had not been satisfied when the action against the first defendants was heard.

The facts were not in dispute. The first defendants were the owners of the site on which the building now known as Peninsula Plaza stands. They had engaged SA Shee & Co Pte Ltd ('SA Shee') as the main contractor to erect the building under the terms of a building contract dated 20 October 1976 which incorporated the standard SIA conditions of contract. They gave possession of the vacant site to SA Shee sometime in October 1976 to carry out the building works. M/s Alfred Wong were appointed by the first defendants as architects for the development. The second defendant was the scaffolding sub-contractor of SA Shee. The plaintiff was an employee of the second defendant.

On 8 August 1979, while the plaintiff was working on the construction site, tying poles with rattan on the third floor of the partially completed building, a brick fell from the upper floors and hit him on the head. He sustained serious injuries as a result.

In his statement of claim, the plaintiff averred that the first defendants were negligent in the following manner:

(a) Failing to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the said premises.
(b) Exposing the plaintiff, while he was engaged upon the said work, to a risk of damage or injury from falling brick of which they knew or ought to have known.
(c) Failing to take any or any adequate or effective precautious to ensure that the brick from the upper floors of the said premises would not fall and strike the plaintiff.
(d) Causing or permitting the said premises to be or to become or to remain in an unsafe and dangerous state, in that the said brick was likely suddenly to fall therefrom.

Before the judge, the liability of the first defendants was put on two grounds: (1) they were occupiers of or had control of the site in that they had engaged architects, a site engineer and a clerk of works to supervise the construction works and the architects had considerable powers to give instructions to SA Shee in relation to the works under the building contract, including the power to instruct the dismissal of workers; (2) the first defendants were liable for the negligence of SA Shee as the duty of care to the plaintiff was one which was not, in the circumstances, delegable.

With respect to the first ground, it was not disputed that the architects had the powers as alleged, and that the first defendants had also engaged an engineer on site to supervise the mechanical and electrical works and a clerk of works to look after the building works. Thean J held that these activities did not make the first defendants in law and in fact the occupiers of the site or give them control of the site. The first defendants' supervisors were only there to see that the work was properly done in accordance with the terms of the contract. He held that the occupiers were SA Shee. We agree with this finding for the reasons given by him. SA Shee were the main contractors in possession of the site. They had possession of and full control over the site and it was they who invited the second defendant and his employ-

ees to come onto the site. The architects were independent contractors and not agents of the first defendants: see *AMF International Ltd* v *Magnet Bowling*,[1] and any control which they might have by virtue of their position could not be said to be the control of the first defendants.

Counsel for the plaintiff had relied on the decision of the Federal Court in *Lembaga Kemajuan Tanah Persekutuan* v *Mariam*[2] as authority for the proposition that in certain circumstances the owner of land could still be regarded as the occupier. Thean J distinguished the case on grounds which we fully endorse. Counsel for the plaintiff also relied on the following passage in the judgment of Lord Denning in *Wheat* v *E Lacon & Co Ltd*[3] (at p 595):

> Fourthly, where an owner employed an independent contractor to do work on premises of a structure, the owner was usually still regarded as sufficiently in control of the place as to be under a duty towards all those who might lawfully come there. In some cases he might fulfil that duty by entrusting the work to the independent contractor: see *Haseldine* v *Daw & Son Ltd* [1941] 2 KB 343 and s 2(4) of the Act of 1957. In other cases he might only be able to fulfil it by exercising proper supervision himself over the contractor's work, using due diligence himself to prevent damage from unusual danger (see *Thomson* v *Cremin* [1953] 2 All ER 1185 as explained by Lord Reid in *Davie* v *New Merton Board Mills Ltd* [1959] AC 604 at pp pp 642-645. But in addition to the owner, the courts regarded the independent contractor as himself being sufficiently in control of the place where he worked as to owe a duty of care towards all persons coming lawfully there. He was said to be an 'occupier' also (see *Hartwell* v *Grayson Rollo and Clover Docks Ltd* [1947] KB at pp 912, 913), but this is only a particular instance of his general duty of care (see *AC Billings & Sons Ltd* v *Riden* [1958] AC 240 at p 250 per Lord Reid).

In our view, this passage was of no assistance to the plaintiff. We do not think that Lord Denning was stating a principle that in all cases where employers had engaged independent contractors to erect a building for them and for that purpose delivers possession of the site to the contractors, the employers remain as occupiers or in control of the site. We agree with the finding of Thean J that this was a case where the first defendants were entitled to and did discharge their duty of care to third parties who come on to the site by employing SA Shee as independent contractors and making them liable in respect of personal injury to or the death of any person arising out of or in the course of or by reason of the carrying out of the works: see cl 18 of the building contract. This case comes within the principle applied in *Haseldine* v *Daw*.[4]

With respect to the second ground, Thean J held, and we also agreed with this finding, that the plaintiff was not injured by reason of any defective and unsafe condition of the premises, but either as a result of current operations being conducted on the site or an unsafe system of work which caused the brick to fall. The evidence established that the current operations were then carried out by SA Shee as the building was partially completed. The first defendants could not be responsible for any negligence arising from these operations as they were not, unlike those in *Honeywill & Stein* v *Larkin Bros*,[5] unusually dangerous or extra hazardous. Accordingly, even if the first defendants were in occupation, they would not be liable on this ground as the first defendants' occupation would not, ipso facto, make them liable for the injury to the plaintiff: see the two passages from the judgments of Lord Keith and Lord Goff in *Ferguson* v *Welsh*[6] which were relied upon by Thean J. If the injury arose as a result of an unsafe system of work, then, in the words of Lord Keith in *Ferguson*'s case[6] (at p 1560):

> It would not ordinarily be reasonable to expect an occupier of premises having engaged a contractor whom he has reasonable grounds for regarding as competent, to supervise the contractor's activities in order to ensure that he was discharging his duty to his employees to observe a safe system of work. In special circumstances, on the other hand, where the occupier knows or has reason to suspect that the contractor is using an unsafe system of work, it might well be reasonable for the occupier to take steps to see that the system was made safe.

For the reasons given above, we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Patrick Koh & Co; Chia Tang Kumar & Loh.*

Reported by *Zarinah Marican*